

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-001-02-1-5-00695
45-001-02-1-5-00701
45-001-02-1-5-00702

Petitioners: Jeanette C Fage & Peter Giannini

Respondent: The Department of Local Government Finance

Parcel #s: 001-25-47-0234-0014
001-25-43-0148-0009
001-25-43-0148-0012

Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held February 12, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessments for the subject properties were \$3,300, \$4,800, and \$3,200 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed Form 139L petitions on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated January 28, 2005.
4. Special Master Kathy J. Clark held a hearing at 11:15 A.M. on March 3, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are located at 379 Hamlin Street, 1124-26 Porter Street, and 1136 Porter Street, Gary. The location is in Calumet Township.
6. The subject properties are three vacant residential lots. The first measures 40' by 125', the second 44' by 125, and the third 30' by 125'.
7. The Special Master did not conduct an on-site visit of the properties

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8. Assessed values of subject properties as determined by the DLGF:
Land \$3,300,
Land \$4,800,
Land \$3,200.
9. Assessed values requested by Petitioners is:
Land \$800,
Land \$300,
Land \$300.
10. Persons sworn in as witnesses at the hearing:
Peter Giannini, Owner,
Diane Spenos, Assessor/Auditor, Department of Local Government Finance.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessments:
 - a. The DeRolf appraisals done for estate purposes on March 24, 1994, state that the area is in decline and reflects substantial external depreciation due to high unemployment and an outward migration to the surrounding suburbs. The appraisal for 379 Hamlin Street sets a value of \$1,500 for this lot. The appraisal for 1124 Porter sets a value of \$1,000 for the Porter Street lots. *Petitioner Exhibit 3, page 2; Giannini testimony.*
 - b. Bart Sikich appraised the 379 Hamlin Street property and the 1124 Porter property for estate purposes on November 21, 1994. The appraisals state that the neighborhood is in decline and reflects substantial external depreciation. They further state that there were no recent sales of similar sites. *Petitioner Exhibit 4, page 5.* The appraisal for 379 Hamlin sets a value of \$1,500 for this lot. The appraisal for 1124 Porter sets a value of \$1,000 for the Porter Street lots. *Id; Giannini testimony.*
 - c. The area has declined further since the closing of nearby Edison High School. *Giannini testimony.*
 - d. The subject lots are "unbuildable" due to size according to Building Ordinances for the City of Gary. *Giannini testimony.*
 - e. Sales in the area demonstrate that lots with more frontage than the subject are selling for as little as \$200 to \$1,000. *Petitioner Exhibits 5, 6. Giannini testimony.*
 - f. The City of Gary continues to market lots in the area to this day for as little as \$150. *Petitioner Exhibit 8; Giannini testimony.*
 - g. A recent newspaper article states that the County is selling lots for as little as \$50 and is concerned that they are being assessed for as much as \$3,800. *Petitioner Exhibit 9; Giannini testimony.*
12. Summary of Respondent's contentions:
 - a. The subject lots are considered "unbuildable" according to the City of Gary building ordinance and should be assessed as such. *Spenos testimony.*

- b. These types of lots are given a negative land influence for being “unbuildable” of 30% and for being vacant 20%, for a total negative influence factor of 50%. *Spenos testimony*.

Record

- 13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The tape recording of the hearing labeled Lake County 1242,
 - c. Exhibits:
 - For Petition: 45-001-02-1-5-00695
 - Petitioner Exhibit 1 - Notice of Final Assessment,
 - Petitioner Exhibit 2 - Form 139L Appeal,
 - Petitioner Exhibit 3 - Appraisal by DeRolf & Associates,
 - Petitioner Exhibit 4 - Appraisal by Bart Sikich,
 - Petitioner Exhibit 5 - Sales Disclosure 301 Dallas Street,
 - Petitioner Exhibit 6 - Sales Disclosure 384 Colfax Street,
 - Petitioner Exhibit 7 - Legal Notice City of Gary for lot sales,
 - Petitioner Exhibit 8 - *Times* newspaper article regarding lot sales,
 - Respondent Exhibit 1 - Form 139L Petition,
 - Respondent Exhibit 2 - Subject property record card,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Notice of Hearing,
 - Board Exhibit C - Hearing Sign In Sheet,
 - For Petitions: 45-001-02-1-5-00701, -00702
 - Petitioner Exhibit 1 - Notice of Final Assessment,
 - Petitioner Exhibit 2 - Form 139L Appeals,
 - Petitioner Exhibit 3 - Appraisal by DeRolf & Associates,
 - Petitioner Exhibit 4 - Appraisal by Bart Sikich,
 - Petitioner Exhibit 5 - Sales Disclosure 1038 Hovey Street,
 - Petitioner Exhibit 6 - Legal Notice City of Gary for lot sales,
 - Petitioner Exhibit 7 - *Times* newspaper article regarding lot sales,
 - Respondent Exhibit 1 - Form 139L Petition,
 - Respondent Exhibit 2 - Subject property record card,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Notice of Hearing,
 - Board Exhibit C - Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Analysis

- 14. The most applicable governing cases are:
 - a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and

- specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners provided sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioners contend the subject properties are over-assessed when compared to the market values for the area. The properties are unbuildable according to the City of Gary building ordinances. *Giannini testimony*.
 - b. The Petitioners submitted two appraisals for the Hamlin property and two appraisals for 1124-26 Porter. The appraisals estimate a value for the Hamlin property at \$1,500 and \$1,000 for the Porter Street property as of March 24, 1994. The Petitioners did not establish how this value would be relevant to the valuation date of January 1, 1999.
 - c. Valuation date is the date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL, at 12 (incorporated by reference at 50 IAC 2.3-1-2.).
 - d. Indiana’s assessment regulations state that a property’s assessment was to reflect the value as of January 1, 1999. If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required if those documents are to have probative value. *William & Dorothy Long v. Wayne Twp Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)
 - e. For the Porter Street properties (001-25-43-0148-0009, 001-25-43-0148-0012), the Petitioners submitted a sales disclosure for 1038 Hovey to show that an improved lot sold for \$4,000 in 2001. Again, no relevance was established between the value in 2001 and the valuation date of January 1, 1999.
 - f. For the Hamlin property, the Petitioners submitted two sales disclosures for vacant lots. The disclosure for 301 Dallas, a lot of identical size to the subject, gives a sale price of \$200; the property sold on September 1, 1998. The other property, 384 Colfax, is smaller than the subject; it sold on November 13, 2000, for \$1,000. *Petitioner Exhibits 5 and 6*.
 - g. The Respondent offered no rebuttal to the sales information submitted by the Petitioner. *See American United Life Ins. Co.*, 803 N.E.2d at 276.

- h. The Petitioners and Respondent both agreed that, according to the Building Ordinances of the City of Gary, the lots are “unbuildable” due to size.
- i. The Respondent testified that the three parcels should each have a total negative 50% influence factor applied due to the lots being vacant (-20%) and unbuildable (-30%).
Spenos testimony.

Conclusion

- 16. The Petitioners provided sufficient evidence to establish a prima facie case. The Respondent agreed that all three lots are vacant and “unbuildable” and that the influence factor should be increased. The Board finds that a total negative 50% influence factor should be applied to each lot.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should be changed.

ISSUED: August 17, 2005

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), § 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.